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January 15, 2004

Federal Housing Finance Board
Secretary to the Board
1777 F Street, N.W.
Washington, DC 20006

Attention: Public Comments

Re: Proposed rule; Registration by Each Federal Home Loan Bank of a class of its Securities under the Securities and Exchange Act of 1934; 12 CFR Parts 900 and 998; 68 Federal Register 54396; September 17, 2003

Dear Sir or Madam:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the Federal Housing Finance Board's ("Finance Board" or "the Board") proposed rule regarding registration by each Federal Home Loan Bank ("FHLBank" or "Bank") of a class of its securities under the Securities and Exchange Act of 1934 ("the Act").

The American Bankers Association brings together all categories of banking institutions to best represent the interests of the rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

The issues of proper disclosure and reporting requirements are of utmost importance to the future of the Federal Home Loan Bank System ("the System") and are inextricably linked to the System's safety and soundness. We appreciate the opportunity to submit our position for the record supporting full, accurate, transparent and enhanced disclosures that are appropriate for the unique structure of the FHLBanks and supporting the maintenance of the Finance Board as the regulator of the System in all regards.

The Finance Board has proposed requiring each Federal Home Loan Bank to prepare and make public disclosures relating to its business and financial condition. To satisfy this requirement, the Board has proposed that each Bank must "voluntarily" register a class of its securities with the Securities and Exchange Commission ("SEC") under the provisions of section 12(g) of the Securities and Exchange Act of 1934. The Board's proposal specifies that by "voluntarily" registering, each Bank will subject itself to the 1934 Act's periodic disclosure regime, as interpreted and administered by the SEC. Although the ABA supports

comprehensive, transparent and complete securities disclosures by the Federal Home Loan Banks, we strongly oppose this proposal.

ABA opposes the rule for three primary reasons: the proposed registration structure is inappropriate for the cooperative nature of the Federal Home Loan Bank System and an alternative structure would serve all parties better; the Finance Board does not have the legal authority to require the Banks to register with the SEC; and the proposed registration requirement would pose significant costs to the System without providing substantial benefits to anyone. Our reasoning is detailed below.

The proposed registration structure is inappropriate to the cooperative nature of the Federal Home Loan Bank System and an alternative structure would serve all parties better.

Our support for comprehensive, transparent and complete securities disclosures by the Federal Home Loan Banks is well established. We have stated that position in written testimony to the Finance Board on December 2, 2002, and in a June 10, 2003, letter to Alan Beller, Director of the Division of Corporate Finance at the SEC. We have further stated an alternative approach, modeled on section 12(i) of the Securities and Exchange Act of 1934, which would fulfill the Finance Board's desire for additional disclosures by the Banks, but without abrogating the Board's regulatory responsibilities.

As a cooperative, the Federal Home Loan Bank System does not fit well into the regulatory structure established by the SEC for publicly traded corporations. The cooperative nature of the System is vital to its continued success as a source of liquidity for the System's members who rely on the FHLBanks to fund the housing, agriculture, small business and community development loans necessary for a thriving economy.

The Finance Board, as the statutorily mandated regulator of the FHLBank System, has the greatest understanding of the System's unique cooperative structure. The Board should not attempt to absolve itself of the responsibility to regulate any aspect of the Banks' safety and soundness – including the full securities disclosures. Implementing an approach based upon section 12(i) of the 1934 Act would maintain the Board as the full and only regulator of the System, and would ensure full securities disclosures by the Banks. Section 12(i) was enacted in 1964, when most publicly held banks did not have a holding company and, as a result of the implementation of Section 12(i), their securities activities would have been regulated by their primary federal bank regulatory agency. In enacting Section 12(i), Congress made a judgment that the banks' specialized regulator was the more appropriate reviewer of these disclosures. The same is true today of the Finance Board and disclosures by the Federal Home Loan Banks. As the safety, soundness and mission regulator of the Banks, the Finance Board is in the best position to review and interpret disclosures by the Banks.

Under a 12(i) approach, the SEC would promulgate the relevant disclosure rules and the Finance Board would apply and enforce them with regard to the Federal Home Loan Banks. The Board would consult with the SEC on what accommodations may be necessary to address the cooperative structure of the Bank

System. Subject to these accommodations, the same rules that apply to all other SEC registrants would apply to the Bank System.

This approach avoids any potential conflict between the different missions of the Finance Board and the SEC, ensures the Banks' ability to access the capital markets is not disrupted by a transition to an additional regulator, and creates a disclosure regime in which the SEC has a significant role.

The Finance Board does not have the legal authority to require the Banks to register with the SEC.

Securities issued by the Federal Home Loan Banks are exempt from the registration and reporting requirements of the Securities and Exchange Act of 1934. This was explicitly recognized by the Finance Board in a 1998 proposed rule regarding financial disclosure when the Board stated "securities issued by both the Finance Board (which at the time was the issuer of FHLBank System consolidated obligations) and the Banks are exempt from the registration and reporting requirements of both the Securities Act (the 1933 Act) and the Exchange Act" (the 1934 Act). (63 Federal Register 5315, 5316 (1998)). The SEC has also recognized this exemption. In a joint report with the Department of the Treasury and the Board of Governors of the Federal Reserve System, they stated that securities issued by government sponsored entities (including the Federal Home Loan Banks) "historically have been exempt from registration under the federal securities laws." (Joint Report on the Government Securities Market, Appendix D (Jan. 1992)).

It is legally impossible for the Finance Board to require the Banks to do something from which they are exempt. The Board seeks to circumnavigate this exemption by requiring the Banks to "voluntarily" register with the SEC. However, it strains the definition of voluntary beyond the breaking point to require volunteerism. Without clear legal authority to require registration, the Finance Board should withdraw the proposal and instead implement a registration approach based on Section 12(i). Registration under a 12(i) approach would require registration under Finance Board regulations, not under the securities laws from which Congress has exempted the Banks.

The proposed registration requirement would pose significant costs to the System without providing substantial benefits.

The First Manhattan Consulting Group ("First Manhattan"), a financial consulting group, was retained by the Federal Home Loan Banks to analyze the potential costs and benefits related to FHLBank registration with the SEC. First Manhattan's analysis indicates that there could be a significant negative impact on the System's liquidity and costs. First Manhattan estimates that registration with the SEC would, along with existing reporting requirements, result in 52 annual reports that could lead to questions or comments that could delay debt issuances or widen the System's debt spreads. Such a result would create the need for the Banks to hold a higher level of liquidity. The exact cost of this increased liquidity depends upon the increased risk that each Bank's Board of Directors sees for potential funding disruption, and the source of the additional liquidity. First Manhattan places the additional costs at between $109 million to $727 million annually for 60 days of

additional funding. Those costs will be passed along to the Bank's members who, in turn, will be forced to pass them along to their customers in the form of higher mortgage rates.

If costs were to increase too drastically, or if funding disruptions became too likely, member institutions could be forced to seek other liquidity management options. First Manhattan estimates that such an outcome could increase FHLBank member costs by as much as $500 million per year.

Conclusion

Because of the lack of clear legal authority; the likelihood of dramatically higher costs to both the Banks and their members; and the ability to achieve the same ends through a different registration structure, ABA strongly urges the Finance Board to reconsider its proposed rule, and to adopt instead an approach based upon our recommendations.

Again, we appreciate the opportunity to comment on this proposal. If you have any questions on the comments expressed in this letter, please contact the undersigned at (202) 663-5328.

Sincerely,

Edward L. Yingling